

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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<b>UNITED STATES OF AMERICA</b>	)	
	)	<b>CRIMINAL NO:</b>
v.	)	<b>03-10234-MLW</b>
	)	
<b>JOSHUA GOLDSMITH</b>	)	
	)	
<b>Defendant</b>	)	
	)	

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**GOVERNMENT'S OPPOSITION TO  
DEFENDANT JOSHUA GOLDSMITH'S MOTION TO SUPPRESS EVIDENCE**

The United States, by and through its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, opposes the motion of the defendant, Joshua Goldsmith, to suppress evidence, and submits this memorandum in support of its opposition.

**I. INTRODUCTION**

On or about May 4, 2004, a three-count Second Superseding Indictment was returned against defendants, John Gillies ("Gillies"), Ben Silver ("Silver") and Joshua Goldsmith ("Goldsmith"), charging them in Count One with conspiracy to possess with intent to distribute marijuana in violation of 21 U.S.C. §§ 841(b)(1)(B)(vii) and 846, and in Counts Two and Three, with possession with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D) and aiding and abetting the same, in violation of 18 U.S.C. § 2. Counts One and Three further allege that the offense involved more than 100 kilograms

of a mixture and substance containing a detectable amount of marijuana, thereby invoking a minimum mandatory sentence of five years, pursuant to 21 U.S.C. § 841(b)(1)(B)(vii), and Count Two alleges that the offense involved more than 50 kilograms of a mixture and substance containing a detectable amount of marijuana, thereby invoking a twenty year maximum sentence, pursuant to 21 U.S.C. § 841(b)(1)(C).

## **II. RELEVANT FACTS**

The facts leading up to the Indictment are as follows. On or about May 16, 2003, Task Force Officer J. Martin Ferrell ("TFO Ferrell") of the DEA -Interdiction Unit in Greensboro, North Carolina, received information from the Old Dominion Shipping Company that its Port Lomo, California, facility had received a suspicious package for delivery to Dracut, Massachusetts.

At the time, TFO Ferrell was advised that the shipper of the crate had paid for delivery by cash. Old Dominion also sent him by facsimile a copy of the Bill of Lading and a xerox copy of the driver's license of the person who dropped off the package - defendant Goldsmith. See, copy of the Affidavit of Johnny Martin Ferrell ¶ 3, filed herewith (hereinafter "Ferrell Affidavit ¶"). The Bill of Lading was handwritten and listed the shipper as the Underwater Equipment Sales, 317 Catalina Ct., Point Loma, CA 92107. It identified two telephone numbers associated with the shipper - 619-980-0807 and 800-329-3324. It also appeared to TFO

Ferrell that the crate was addressed to DVP Diving Studio, 33 Silva Lane, Dracut, MA 01826 with a telephone number of 781-244-2154. Ferrell Affidavit ¶ 4. The Bill of Lading described the freight as a wooden crate containing "test equipment." Id. Finally, "will call" was indicated, meaning that someone would be picking it up at Old Dominion's loading dock, rather than having Old Dominion deliver it to its ultimate destination.

Upon receiving that information, TFO Ferrell performed a records check on Goldsmith, and learned that Goldsmith had a previous marijuana trafficking arrest on April 11, 1992 from Chicago, IL. TFO Ferrell also learned that Goldsmith had possessed 19.5 pounds of marijuana at the time. Ferrell Affidavit, ¶ 4. TFO Ferrell then conducted a criminal history check on Goldsmith and learned that Goldsmith had been convicted on August 16, 1991 of this charge, and that he was also arrested in California on January 25, 2001, for possessing marijuana for sale and conspiracy. The last arrest showed no disposition. Id.

In addition to learning about Goldsmith's past marijuana dealings, TFO Ferrell also learned that one of the phone numbers listed on the Bill of Lading had a prior drug connection. Ferrell Affidavit ¶ 5. Specifically, TFO Ferrell learned that one of the numbers was associated with a Michael Joseph Doyle, who had appeared on a DEA database as being suspected of distributing kilogram quantities of cocaine, and distributing

crystal methamphetamine, ecstasy, ketamine, rohypnol, xanax and marijuana. Ferrell Affidavit ¶ 5.

Based upon this information, TFO Ferrell contacted security at Old Dominion, and requested that Old Dominion reroute the package to Greensboro, North Carolina, the location of both TFO Ferrell's office and another Old Dominion hub. Ferrell Affidavit ¶ 6. When he did so, TFO Ferrell learned that the package was already en route. Id. He also knew that because the package was destined to Massachusetts, the package would first travel to Old Dominion's hub in Morristown, TN, prior to being shipped to its ultimate destination. Id.

After requesting that the package be rerouted to Greensboro, TFO Ferrell learned additional information about the shipper and the consignee. He learned that there was no business in the Point Loma, CA, area with the name of the shipper, Underwater Equipment Sales. He learned that the shipper's address, 317 Catalina Ct., Point Loma, CA, was fake. Ferrell Affidavit ¶ 7. Likewise, he learned that there was no business in the Dracut, MA, area with the name of the recipient, DVP Diving Studio, or any similar name. Id. He also learned that the address listed for DVP Diving Studios was actually the address for the Old Dominion depot in Dracut, MA. Id.

Based upon this information, and upon his training and experience, on May 21, 2003, TFO Ferrell obtained a search

warrant for the crate.<sup>1</sup> Ferrell Affidavit ¶ 9. On that day, the crate had arrived at Old Dominion's facility in Greensboro, NC. TFO Ferrell immediately executed the warrant and discovered the crate contained four locked containers, each of which contained marijuana. Id.

TFO Ferrell seized the marijuana and immediately advised DEA in Boston, MA, about his discovery. Ferrell Affidavit ¶ 10. The next day, May 22, 2003, TFO Ferrell transferred the marijuana to the DEA Flight wing in Greensboro, NC, which then flew the marijuana to DEA-Boston, MA. Ferrell Affidavit ¶ 10.

DEA-Boston took custody of the marijuana on May 22, 2003, and arrangements were made for a controlled delivery. On May 27, 2003, defendant Gillies attempted to pick up the marijuana from the Old Dominion facility in Dracut, MA, but was unable to do so because the crate could not fit into his truck. The next day, Gillies tried again, took custody of the crate, and drove it to a private storage facility. At that time, he was met by Silver and another individual, John Ryan. Gillies and Silver were then arrested.

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<sup>1</sup>A copy of the warrant is attached as Exhibit 4 to Goldsmith's Motion to Suppress.

### III. ARGUMENT

A. The Defendant Does Not Have A Reasonable Expectation Of Privacy In the Crate

At the outset, Goldsmith cannot claim the protection of the Fourth Amendment in the crate because he cannot carry the burden of proving he had a legitimate expectation of privacy in the seized packages. "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted," Alderman v. United States, 394 U.S. 165, 174 (1969), and the defendant bears the burden of demonstrating that he had a legitimate expectation of privacy in the contents of the package as a threshold requirement to having a cognizable Fourth Amendment claim. See Rawlings v. Kentucky, 448 U.S. 98, 104 (1980).

Although the Supreme Court stated in Rakas v. Illinois, 439 U.S. 128 (1978), that this inquiry falls under substantive Fourth Amendment doctrine, courts use the term "standing" as shorthand for the existence of a legitimate privacy interest sufficient to assert a Fourth Amendment claim. See, e.g. United States v. Richards, 638 F.2d 765, 769 (5th Cir.), cert. denied, 454 U.S. 1097 (1981). The qualifier "legitimate" evinces more than the mere bona fides of the defendant's expectation of privacy. The defendant's subjective expectation must also be "legitimate," in that society must be prepared to recognize it as reasonable. See Rakas v. Illinois, 439 U.S. 128, 143 n.12 (1979). These two inquiries are distinct and the defendant bears the burden and

must prevail on both. See United States v. Paulino, 850 F.2d 93, 96-97 (2d Cir. 1988), cert. denied, 490 U.S. 1052 (1989)(defendant may have a bona fide subjective expectation of privacy, but still have no legitimate expectation of privacy interest where society does not willingly accept it as reasonable). The First Circuit has offered the following list of generic factors which may be pertinent to that inquiry:

ownership, possession, and/or control; historical use of the property searched or the things seized; ability to regulate access; the totality of the surrounding circumstances; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of such an expectancy under the facts of a given case.

United States v. Aquirre, 839 F.2d 854, 856-57 (1st Cir. 1988).

While sealed letters and packages are clearly entitled to Fourth Amendment protection, see United States v. Jacobsen, 466 U.S. 109, 114 (1984), the defendant does not have a cognizable Fourth Amendment interest where he is neither the sender nor the addressee of a package. In cases comparable to the instant case, courts have refused to find a legitimate expectation of privacy in the contents of a package where, as here, the defendant claiming a privacy interest is neither the sender nor the addressee, especially where fictitious information is used to disguise the ownership of the package. United States v. Pitts, 322 F.3d 449, 456-457 (7<sup>th</sup> cir. 2003)(no 4<sup>th</sup> Amendment protection where sender abandoned package because package label listed the

sender under an assumed name and sender did not have proper identification under assumed name); United States v. Smith, 39 F.3d 1143, 1144-45 (11th Cir. 1994)(no expectation of privacy where letter was addressed to another and only equivocal evidence of defendant's ownership of contents); United States v. Daniel, 982 F.2d 146, 148 (5<sup>th</sup> Cir. 1993)(intended recipient of package had no 4<sup>th</sup> Amendment protection where package addressed to a fictitious person); United States v. Pierce, 959 F.2d 1297 (5th Cir. 1992)(no expectation of privacy where defendant was neither sender nor the addressee of the package); United States v. Koenig, 856 F.2d 843 (7th Cir. 1988)(defendant who was neither sender nor addressee had no privacy interest where no other source of privacy interest in package was asserted); United States v. Givens, 733 F.2d 339, 342 (4th Cir. 1984)(no expectation of privacy where package addressed to another individual); United States v. Zavala, 2003 WL 431636, \*1 (E.D. PA 2003) (even if defendants had subjective interest in package, their failure to disclose true identities on package vitiates a 4<sup>th</sup> Amendment expectation of privacy).

Although Goldsmith was the person who brought the package to Old Dominion for shipping, the package itself was shipped under an assumed name and address. The Bill of Lading showed the sender was "Underwater Equipment Sales," with an address at 317 Catalina Court, Pt. Loma, CA, 92107. Underwater Equipment Sales

is a fictitious name. 317 Catalina Court is a fictitious address. The same is true for the intended recipient of the crate. The Bill of Lading states that the crate was to "DVP Diving & Video" at 33 Silva Lane, Dracut, MA. There is no entity with the name "DVP Diving Studios" or any similar name in the Dracut, MA area. Investigation showed that the 33 Silva Lane, Dracut, MA, is actually the address for Old Dominion Freight Company. In circumstances such as this, there is simply no legitimate expectation of privacy. United States v. DiMaggio, 744 F.Supp. 43, 46 (N.D.N.Y. 1990) (expectation of privacy in package vanished when defendants listed false identities as sender and recipient). "Society would not be prepared to recognize such an expectation of privacy as reasonable where the individual has not legitimately manifested to society -- in some appropriate manner given the context -- that he is entitled to such privacy."); but see United States v. Wood, 6 F.Supp. 2d 1213, 1223-24 (D. Kansas 1998) (where package addressed to fictitious name that is the alter ego of defendant, and defendant is the immediate recipient, defendant has standing); United States v. Allen, 741 F.Supp. 15 (D. Maine 1990) (where defendant paid addressee \$50 to use address and to deliver unopened package to defendant upon receipt, defendant retained legitimate expectation of privacy).

As Goldsmith has not established a legitimate expectation of

privacy in the contents of the UPS packages, his Motion To Suppress Evidence should be denied without a hearing.

B. The Seizure Of The Crate Was Lawful Because Law Enforcement Had A Reasonable Suspicion to Detain

Assuming, *arguendo*, that Goldsmith has a reasonable expectation of privacy in the crate, his motion to suppress must nevertheless be denied because law enforcement had a reasonable suspicion to detain.<sup>2</sup>

In order to support a seizure, law enforcement officials must possess a reasonable suspicion based on articulated facts that a package contains contraband before they may detain the package for investigation. See United States v Van Leeuwen, 397 U.S 249, 252-53 (1970). See also United States v. Place, 462 U.S. 696, 700-06 (1983) (reasonable suspicion can justify brief detention of property); United States v. West, 731 F.2d 90, 91-92 (1st Cir. 1984) (similar), cert. denied, 469 U.S. 1188 (1985).

In the instant case, the following characteristics were applicable to the crate and are consistent with the drug-package profile. First, the bill of lading was handwritten and, at least on the facsimile copy, was not particularly legible. In particular, when TFO Ferrell reviewed the facsimile copy, it appeared to him that the recipient was "DVP Diving Studio," not

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<sup>2</sup>It is questionable whether the package was even "detained" by law enforcement personnel prior to the warrant being issued, given the fact that Goldsmith had no possessory interest in the crate at the time the crate was directed to Greensboro, NC.

"DVP Diving & Video," as it actually appears on the bill of lading. This poorly written bill of lading is inconsistent with Goldsmith's assertion that the package could have been from a legitimate small business, as even the most basic sole proprietor has ready access to word processing equipment. Second, TFO Ferrell was advised that payment for the shipment was made in cash, and was designated for "will call" pickup and shipped via commercial mail receiving agency ("CMRA"). Id. According to the Eighth Circuit in United States v. Logan, 362 F.3d 530, 531 (8<sup>th</sup> Cir. 2004), "traffickers frequently ship packages via CMRAs to conceal the sender's identity, and prefer to use handwritten labels that can be filled out moments before the package is deposited with the CMRA to further lessen the chances of detection." Id. Third, records checks on Goldsmith's name revealed a prior conviction in Chicago, Illinois, for possession with intent to distribute marijuana, as well as an arrest in California in 2001 for possessing marijuana and for sale and conspiracy to commit a crime. Id. Fourth, records checks within DEA database revealed that at least one of the telephone numbers listed on the bill of lading was associated with a Michael Joseph Doyle ("Doyle"), and that Doyle was suspected in distributing kilogram quantities of cocaine, and distributing crystal methamphetamine, ecstasy, ketamine, rohypnol, xanax, and marijuana. Id.

It was based upon these facts that TFO Ferrell requested that the Old Dominion Freight Lines to reroute the package to Greensboro, NC. It is important to note, however, that TFO Ferrell was advised that even with this slight diversion from Tennessee to North Carolina, there would be no delay in delivery if he were ultimately to determine that a search of the crate was not warranted.

In the Supreme Court's Van Leeuwen decision, a postal clerk was suspicious of a package and notified a policeman. The policeman noticed that the return address on the package was a vacant housing area and that the license plate of the person who mailed the package was from British Columbia. He also learned the addressees of the package were under investigation for trafficking illegal coins. On these facts, the Supreme Court upheld a finding of reasonable articulable suspicion which justified detention of the packages. Van Leeuwen, 397 U.S. at 252-253. In United States v. LaFrance, 879 F.2d 1 (1<sup>st</sup> Cir. 1989), the First Circuit likewise considered a similar case. In LaFrance the Lewiston, Maine police received anonymous tips that the defendant was selling cocaine and marijuana received via Federal Express. They then investigated and found out that the defendant had sent and received weekly FedEx packages to and from Florida over the past few months, and based upon that information the First Circuit upheld a finding of reasonable articulable

suspicion. LaFrance, 879 F.2d at 4-5.

Additionally in United States v. Allen, 990 F.2d 667 (1<sup>st</sup> Cir. 1993), the defendant had received three Express Mail packages in five months and the postal inspector investigating knew that the defendant had received suspicious mailings in the past from the West Coast, and noted the suspicious nature of mailing label and the fact individuals rarely receive Express Mail packages. Based upon these facts and the fact that the postal inspector had seven years of experience investigating drug transportation through the mail, and had investigated between 200 and 300 cases involving transport through Express Mail, reasonable suspicion was found and the detention of the package was justified Id. at 671. Of additional relevance numerous other circuits have commented on articulable reasonable suspicion in similar circumstances. See, e.g., United States v. Martin, 157 F.3d 46, 53 (2d Cir. 1998) (reasonable suspicion to detain UPS package because it contained 8 airplane parts whose serial numbers were listed as stolen on nationwide stolen parts locator system); United States v. Daniel, 982 F.2d at 150 (5th Cir. 1993) (per curiam) (reasonable suspicion to detain package because it matched size and shape of "drug package profile"; package was securely taped, labels were handwritten, it was second mailing within a week, it was shipped via private air courier, and sender was from a drug-source city); United States v. Ward 144 F.3d

1024, 1029 (7th Cir. 1998) (reasonable suspicion for DEA agent with 22 years' experience to seize unattended bag on bus because bag came from high-crime area and agent knew this was a common way to transport drugs); United States v. Nurse, 916 F.2d 20, 24 (D.C. Cir. 1990) (reasonable suspicion to detain bag because passenger traveled from drug-source city late at night, paid cash for train ticket, carried unreliable identification, gave vague answers about destination and host, and attempted to leave with bag and conceal destination when officer said would detain bag); United States v Demoss, 279 F.3d 632, 636 (8<sup>th</sup> Cir. 2002) (reasonable suspicion to detain package because it was sent overnight, paid for with cash, no telephone numbers listed for sender or recipient, and package taped excessively and smelled of perfume)

Thus, in the instant case where TFO Ferrell was aware of the suspicious nature of the bill of lading, the cash payment, the will call status of the package, the criminal history of Goldsmith, the drug connections to one of the phones associated with the sender, reasonable suspicion existed to justify a brief detention of this package, in order for TFO Ferrell investigate further and obtain a search warrant.

C. The De Minimis Intrusion of the Detention Justify the Seizure

Given the fact that seizures of property can vary in intrusiveness, some brief detentions of personal effects, such as

packages, may be so minimally intrusive of Fourth Amendment interests that strong countervailing governmental interests will justify a seizure, especially when based on specific articulable facts that property contains contraband or evidence of a crime. Thus, given the observation in United States v. Mendenhall, 446 U.S. 544 (1980), that the public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit, it is clear that the principles of Terry and its progeny would permit agents to detain the package briefly and in a limited manner, as was done in the instant case.

As to the specific meaning of a reasonable, limited detention, the Supreme Court has declined to adopt any outside time limitation or circumstance. The instant case however, compares favorably to First Circuit precedent. In LaFrance the First Circuit takes note that the vast majority of case law dealing with property detention involves luggage. LaFrance, 879 F.2d at 5. The court notes however, that "the case at bar is cut from a different cloth than the luggage detention cases." Id. The court in LaFrance noted that while a speedy, set delivery schedule influences one's possessory interests in property, the analogy to luggage detention is inapt, because luggage detention implicates not only an individual's possessory interest, but also his "liberty interest in proceeding with his itinerary." Id. Thus, as the court notes, in the ordinary commercial package

case, there is no liberty interest accompanying the possessory interest, the police are subject to fewer restraining circumstances. Id. at 6.

This is particularly true in the instant case, since, unlike the Federal Express recipient in LaFrance, the recipient here did not have a contractual expectation that the package would be delivered at a set time. Indeed, because it was a "will call" delivery, the recipient of the package would receive a call when the package arrived, and would be instructed to come to the dock and pick it up. Thus, here the recipient would not have been waiting for the package, encumbered by its late arrival. He instead would have been free to go about his ordinary business. Therefore, as the First Circuit in both LaFrance and Allen ruled, this court should apply a less exacting scrutiny to the reasonableness of package detentions vis a vis luggage detentions, or, for that matter, Federal Express deliveries.

It is true that the police are not free to dispossess an individual at will. In parcel detention, reasonableness remains the focus of judicial inquiry. Id. The court in LaFrance goes on to make an explicit holding that time of detention is not necessarily synonymous with, or even a reliable proxy for, intrusiveness of detention, and that consequently the duration of a detention, while an important consideration, is not the sole yardstick with which the suitability of police procedures must be

measured. Id. According to LaFrance and affirmed by Allen, there are three presumptively relevant factors in determining the reasonableness of the detention: 1) investigatory diligence, 2) length of detention, and 3) information conveyed to the suspect. Allen, 990 F.2d at 671 (citing LaFrance, 879 F.2d at 7).

As to diligence the court in LaFrance stated "diligence, we think, is fairly characterized by steady, earnest, energetic and attentive application and effort toward a predetermined end." LaFrance, 879 F.2d at 8. Based upon that definition it is clear that TFO Ferrell was diligent in the instant case. At the time he made his request to Old Dominion to reroute the package, the package was already on its way to Morristown, TN, Old Dominion's east coast hub. During the following days (including the weekend), TFO Ferrell learned additional information suggesting that the crate was part of a narcotics scheme. He made inquiries about the sender and about the intended recipient of the crate. He learned from the California authorities that no such business as "Underwater Equipment Sales" existed in the Point Loma area. He also learned that the address the so-called business used was completely fake. TFO Ferrell also made inquiry about "DVP Diving Studio," the intended recipient, and learned that this business was likewise fake, and that it did not list a legitimate address. Rather, it used the address of Old Dominion.

With respect to the reasonableness of the length of the

detention, the government contends that there essentially was no detention at all, or, if so, it was extremely limited. TFO Ferrell first received information regarding the suspicious nature of this package on Friday, May 16, 2003. When he made his determination later that day that the package should be rerouted, the package was already in transit. According to Old Dominion records, the crate arrived in Morristown, TN, on May 20, 2003.<sup>3</sup> The next day, instead of being driven to Dracut, MA, it was delivered to Greensboro, NC. By that time, TFO Ferrell had investigated enough such that he had applied for, and obtained, a search warrant, and promptly discovered the marijuana after the search. The crate with the marijuana was then taken into DEA custody, and promptly flown to the Boston, MA area on May 22, 2003.

Thus, arguably, the only period of time in which the crate was "seized" without a warrant was the short time period between May 20, 2003, through May 21, 2003, when the crate was loaded onto a truck headed for Greensboro, rather than for Dracut, MA. However, during this period of time, Goldsmith did not have a possessory interest in the crate. Goldsmith suggests that he should have had the package in five days, but, significantly, does not assert that he had a contractual right to have the

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<sup>3</sup>The crate was headed to Morristown, TN, whether or not TFO Ferrell had requested it be rerouted.

package delivered within five days. Further, the five day period does not include weekends or the day of pick-up/delivery. Thus, in this case, the five days would have expired on May 22, 2003 (after the date the marijuana was seized pursuant to the warrant). When the crate was driven from Morristown, TN, to Greensboro, NC, rather than being directed to Dracut, MA, Goldsmith did not have a possessory interest in the crate. Thus, there was not a detention between this time and the time when TFO Ferrell discovered the marijuana pursuant to the search warrant.

Even if the court were to find that Goldsmith had a contractual interest with Old Dominion with respect to a delivery date, it is clear that until the originally expected delivery date had passed, that any contractual interest was substantially unscathed. It is only upon the package's failure to be delivered on time, that there is any substantial intrusion upon that possessory interest. United States v. LaFrance, 879 F.2d at 9.

The third factor to determine the reasonableness of the detention - the information communicated to the suspect - is inapplicable here. According to the First Circuit in LaFrance, the underlying rationale of Place suggests that "if accurate, information about where luggage has been taken, for how long, and how it may be returned, is important largely because it affects a liberty interest (i.e. the possessor's ability to travel); misinformation can obviously cause delay, disruption of routing

and timing, or general inconvenience." See Id. (citing Place, 462 U.S. at 708; West, 731 F.2d at 94). Where the intrusion implicates only a possessory interest, as in parcel detention cases, however, that interest is usually unaffected by the place at which the seized article is kept and what one is told, so long as the object's condition is undisturbed. Id. Only information about how long the detention may last is relevant, because only such information relates to the length of dispossession. Id. Here, no information was communicated to the recipient, no possessory interests were displaced and no unlawful seizure occurred.

D. The Search Warrant In This Case Was Supported By Probable Cause

The First Circuit, in the case United States v. Riberio, 397 F.3d 43, 48 (1<sup>st</sup> Cir. 2005), recently reiterated the probable cause requirements for a search warrant: "A warrant application must demonstrate probable cause to believe that (1) a crime has been committed--the 'commission' element, and (2) enumerated evidence of the offense will be found at the place to be searched--the so-called 'nexus' element." "In determining whether the nexus element is satisfied, a magistrate has to make 'a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place. . . . Put differently, the

application must give someone of "reasonable caution" reason to believe that evidence of a crime will be found at the place to be searched." Id. at 49 (citations omitted).

The facts which gave TFO Ferrell reasonable suspicion to request that the crate be rerouted, when coupled with the facts he learned after he requested the crate be rerouted, support a finding of probable cause. As described previously, the bill of lading was handwritten and not particularly legible; the shipment was paid for in cash; pick up was arranged via "will call", and the shipment was with a commercial mail receiving agency. In addition, the person dropping off the package, Goldsmith, had a past criminal history in marijuana trafficking and one of the phone numbers on the bill of lading likewise was linked to drug trafficking. Finally, and significantly, it was apparent by the time TFO Ferrell applied for the warrant, that the shipper and the recipient of the crate chose to remain anonymous, as both the shipper's name and the recipient's name were fake, as was the shipper's address. The recipient, on the other hand, chose to use a real address, but just not an address that would reveal its identity. It chose to use the address of Old Dominion itself.

Based upon these facts, and TFO Ferrell's training and experience as a narcotics investigator for the past thirteen years, including his involvement with over 500 cases involving the sale and delivery of illegal controlled substances, the

search warrant set forth sufficient facts to establish probable cause to believe that an illegal controlled substance would be contained with the package sent by the defendant.

Accordingly, there was probable cause for a search warrant to issue and this court should uphold its use and application.

E. Assuming, Arquendo, The Search Warrant Was Not Supported By Probable Cause, The Law Enforcement Officer Acted In Good Faith, And, Therefore, The Good Faith Exception To Suppression Applies

Even if the Court were to find that the warrant authorizing the search of the crate was issued without sufficient probable cause, the evidence seized pursuant to the warrant is nevertheless admissible pursuant to holding in United States v. Leon, 468 U.S. 897 (1984).

In Leon, the Supreme Court adopted an exception to the exclusionary rule, which requires that evidence seized in violation of the Fourth Amendment be excluded from trial. 468 U.S. at 905-926. In doing so, the Court recognized that the purpose of the exclusionary rule is to deter misconduct, and thus declined to apply the rule where an officer acts in good faith to obtain a warrant, because suppression in such cases does not "logically contribute to the deterrence of Fourth Amendment violations." United States v. Capozzi, 347 F.3d 327, 332 (1<sup>st</sup> Cir. 2003).

The Leon Court preserved the remedy of suppression in four situations: 1) where the issuing magistrate judge was misled by

information in an affidavit that the affiant knew was false or would have known was false except for reckless disregard of the truth; 2) where the issuing magistrate judge wholly abandoned his detached and neutral judicial role; 3) where the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; and 4) where a warrant is so facially deficient that the executing officers cannot reasonably presume it to be valid. Leon, 468 U.S. at 923.

None of these situations exist in this case and the defendant does not suggest otherwise. As described above, the affidavit here set forth sufficient probable cause, such that TFO Ferrell's reliance on the search warrant was objectively reasonable. See Leon, 468 U.S. at 919 n.20; see also Illinois v. Gates, 462 U.S. 213, 235 (1983) ("only the probability, and not a *prima facie* showing, of criminal activity is the standard of probable cause.") (citation omitted). Moreover, even if the affidavit did not establish probable cause, it clearly was not "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" Leon, 468 U.S. at 923, quoting Brown v. Illinois, 422 U.S. 590, 610-611 (1975) (Powell, J., concurring in part). Suppression is not an appropriate remedy where the warrant, even if defective, is based upon "evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause."

Leon, 468 U.S. at 926.

Accordingly, even if the court were to find that the warrant lacking in probable cause in this case, the court should not likewise find that the evidence should be suppressed due to the good faith exception articulated in Leon.

**IV. CONCLUSION**

Based upon the foregoing, the court should deny the defendant's motion to suppress.

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By: /s/ Susan M. Poswistilo  
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